

CALENDAR ITEM

73

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10/16/15
W 26609/AD 642
R. Collins
K. Colson

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CONSIDER MODIFICATIONS TO A COMPROMISE TITLE SETTLEMENT AND LAND EXCHANGE AGREEMENT INVOLVING CERTAIN INTERESTS IN LAND LOCATED ADJACENT TO AND IN THE SAN GABRIEL RIVER, AND ALONG FIRST STREET AND MARINA DRIVE, IN THE CITY OF SEAL BEACH, COUNTY OF ORANGE, CALIFORNIA

PARTIES:

Bay City Partners, LLC

California State Lands Commission, in its regular capacity and as Trustee of the Kapiloff Land Bank Fund

Bay City Partners, LLC (Bay City) owns the fee title to 10.9 acres of land along First Street, Marina Drive, and the San Gabriel River in the City of Seal Beach (City). Bay City proposed to develop a portion of the 10.9-acre site into residential lots and the rest of the site, approximately 6.4 acres, would be used for public open space and passive recreation purposes. Within 4.5 acres planned for residential development, a 1.168-acre parcel is impressed with a public trust easement held by the Commission. Because residential development is generally considered inconsistent with the common law Public Trust Doctrine, Bay City proposed a compromise title settlement and land exchange to terminate the public trust easement in exchange for granting a new public trust easement to the Commission.

AUTHORIZED AGREEMENT:

On October 14, 2014, the Commission authorized the Compromise Title Settlement and Land Exchange Agreement (Agreement) to terminate the public trust easement on the 1.168-acre parcel (Trust Termination Easement Parcel) in exchange for the Commission receiving a public trust easement on a 1.177-acre parcel (Public Trust Easement Parcel). In addition, the Commission would receive \$2.71 million for the Kapiloff Land Bank Fund. A depiction of the parcels involved in the exchange is shown on Exhibit A.

http://archives.slc.ca.gov/Meeting_Summaries/2014_Documents/10-14-14/Items_and_Exhibits/108.pdf.

In March 2015, the California Coastal Commission considered Bay City's application for a coastal development permit. The Coastal Commission approved

CALENDAR ITEM NO. 73 (CONT'D)

a permit that requires four of the planned residential lots to be reserved for visitor-serving uses, including lower cost accommodations, through an offer-to-dedicate mechanism. Bay City must execute and record a document irrevocably restricting and offering to dedicate the four lots in fee to a public agency or private association for visitor-serving uses. The four lots, approximately 4,000 square feet each, are located within the Trust Termination Easement Parcel along Marina Drive. The revised findings for the Bay City permit were approved by the Coastal Commission on September 9, 2015.

BAY CITY PROPOSAL TO MODIFY AGREEMENT:

Due to the conditions on the coastal development permit imposed by the Coastal Commission Bay City desires to modify the Agreement and proposes to only terminate the public trust easement on certain portions of the 1.168-acre parcel that are still planned for residential development. In Bay City's proposal, the Trust Termination Easement Parcel would be reduced to approximately 0.38 acre and would exclude the four lots as well as the public streets. The public trust easement would remain on the majority of the parcel. The Bay City Proposal is shown on Exhibit B. In addition, Bay City proposes to pay \$882,900 instead of \$2.71 million into the Kapiloff Land Bank Fund. The 1.177-acre Public Trust Easement Parcel granted to the Commission would remain the same.

ALTERNATE PROPOSAL TO MODIFY AGREEMENT:

A third option would be to modify the Agreement to terminate the public trust easement on the entire 1.168-acre parcel except for the four lots that must be reserved for visitor-serving uses. The Trust Termination Easement Parcel would be reduced to approximately 0.78 acre, and Bay City would deposit a lesser amount, \$1.82 million, into the Kapiloff Land Bank Fund. The Public Trust Easement Parcel would remain the same.

LEGAL REQUIREMENTS FOR A TITLE SETTLEMENT AND LAND EXCHANGE:

Pursuant to Public Resources Code section 6307 (Section 6307), the Commission is authorized, under certain limited circumstances, to terminate the State's public trust interests and enter into a compromise title settlement and land exchange agreement. The Commission, in order to comply with article X, section 3 of the California Constitution and to approve the proposed Agreement, must make the following requisite findings pursuant to Section 6307:

- (1) The exchange is for one or more of the following purposes:
 - a. To improve navigation or waterways;
 - b. To aid in reclamation or flood control;
 - c. To enhance the physical configuration of the shoreline or trust land ownership;
 - d. To enhance public access to or along the water;

CALENDAR ITEM NO. 73 (CONT'D)

- e. To enhance waterfront and nearshore development or redevelopment for public trust purposes;
 - f. To preserve, enhance, or create wetlands, riparian or littoral habitat, or open space; and/or
 - g. To resolve boundary or title disputes.
- (2) The lands or interests in lands to be acquired in the exchange will provide a significant benefit to the public trust;
 - (3) The exchange does not substantially interfere with public rights of navigation and fishing;
 - (4) The monetary value of the lands or interests in lands received by the trust in exchange is equal to or greater than that of the lands or interests in land given by the trust in exchange;
 - (5) The lands or interests in land given in exchange have been cut off from water access and are in fact no longer tidelands or submerged lands or navigable waterways and are relatively useless for public trust purposes;
 - (6) Mineral interests are not being exchanged as part of the Agreement; and,
 - (7) The exchange is in the best interests of the state.

Kapiloff Land Bank Fund

The Commission administers the Kapiloff Land Bank Fund as the trustee under Public Resources Code section 8600 et seq. The Kapiloff Land Bank Fund facilitates settlements of title to real property with cash payments where exchange parcels are not readily available or are not of equal value. The types of land that can be acquired with the funds include outstanding interests in tide and submerged lands, lands which may have been converted to wetlands, or adjoining or nearby lands where the public use and ownership of the land are necessary or extremely beneficial for the furtherance of public trust purposes. (Pub. Resources Code, § 8613, subd. (a).)

ANALYSIS AND STAFF RECOMMENDATION:

Commission staff analyzed all the evidence available concerning the site in question, including the title history, title reports, historic use reports, surveys, survey instructions, maps, historic photographs, feasibility studies, appraisals, local and state governmental staff reports, applicable case law and other useful information in determining a recommendation for the Agreement. Since the two proposals to modify the Agreement involve terminating the public trust easement on smaller portions of the Trust Termination Easement Parcel and do not affect the Public Trust Easement Parcel at all, most of the analysis under Section 6307 is identical for Agreement as well as the two proposals.

Purposes of the exchange.

The purposes of the exchange provided for in the Agreement are to: 1) enhance public access and recreation to and along the water; 2) enhance the physical

CALENDAR ITEM NO. 73 (CONT'D)

configuration of the trust land ownership, and 3) resolve a title dispute. Currently, the Trust Termination Easement Parcel is not adjacent to the San Gabriel River and only one corner of the parcel comes near the river. The Public Trust Easement Parcel to be received is partially located within the San Gabriel River and is a long parcel that extends along the river and the bike path located next to the river. Since the Public Trust Easement Parcel is physically located in and along the water, it provides better direct and continuous access to the San Gabriel River than the Trust Termination Easement Parcel. Since the privately owned Public Trust Easement Parcel is already improved with a bike path, obtaining a public trust easement, held by the Commission, in this parcel would ensure that the public has the right to use the bike path. The Public Trust Easement Parcel connects directly with the San Gabriel River and there will no longer be a gap in state sovereign ownership. Additionally, the Agreement will also resolve a title dispute between Bay City and the Commission of whether there is a valid public trust easement over the Trust Termination Easement Parcel.

Interests in land to be acquired will provide a significant benefit.

The Public Trust Easement Parcel provides significant benefits to the public trust through public access and recreation to, along, and in the San Gabriel River towards the Pacific Ocean. The Public Trust Easement Parcel has been improved with a portion of the San Gabriel River Bike Path that allows the public access from the Pacific Ocean to the San Gabriel Mountains. According to Bay City, there is a seasonal beach that occurs in the San Gabriel River within the Public Trust Easement Parcel that could provide beach access and beach recreational activities. The Public Trust Easement Parcel enhances the physical configuration of the trust land ownership because the public trust easement will now be located in and adjacent to the San Gabriel River. Additionally, the money to be deposited in the Kapiloff Land Bank Fund will allow the Commission to acquire interests in tide or submerged land or nearby uplands that are necessary and beneficial for public trust purposes, including meaningful public access.

Exchange does not substantially interfere with public rights of navigation and fishing.

The Trust Termination Easement Parcel has been filled and reclaimed and is not covered with water. Terminating the public trust easement on the parcel would not interfere with any navigation or fishing rights because it is not possible to participate in either activity on the filled parcel. The Public Trust Easement Parcel, however, will allow the public to access the water and engage in navigation, water-related recreational and fishing activities.

CALENDAR ITEM NO. **73** (CONT'D)

Monetary value of lands or interests in lands received by the trust is equal or greater than lands given by the trust.

Commission staff spent a significant amount of time appraising the value of the public trust easement on the Trust Termination Easement Parcel. Staff's approach was to appraise the value of the parcel based on the highest and best economic use with a trust consistent development (i.e., a visitor-serving hotel) and compare that with the highest and best economic use of the parcel without consideration of the Public Trust Doctrine (i.e., residential development). The difference between those values is the basis of the valuation of the public trust easement on the Trust Termination Easement Parcel. Staff determined the state's public trust easement interest in the Trust Termination Easement Parcel is valued at \$2.71 million.

Commission staff is unable to assign any monetary value to the Public Trust Easement Parcel because Bay City plans to transfer the fee ownership of the Public Trust Easement Parcel to the City. Under City ownership, the Public Trust Easement Parcel will be used for essentially the same public access purposes as the public trust easement that the Commission will obtain over the parcel.

Under the Commission's original approval, \$2.71 million was the agreed upon amount to be deposited into the Kapiloff Land Bank Fund. If the Commission approves the Bay City proposal or the Alternate proposal, the reduced Trust Termination Easement Parcel will correspond with a proportionately reduced amount for the Kapiloff Land Bank Fund. Under the Bay City proposal, the Trust Termination Easement Parcel would be approximately 0.38 acre and the money paid into the Kapiloff Land Bank Fund would be \$882,900. Under the Alternate proposal, the Trust Termination Easement Parcel would be approximately 0.78 acre and the Kapiloff deposit would be \$1.82 million.

Under all three options, the monetary value of the lands or interests in lands to be received into the trust is equal or greater than the interest in lands given by the trust.

Lands or interests in land given have been cut off from water access are no longer tidelands or submerged lands and are relatively useless for trust purposes.

The Trust Termination Easement Parcel has been filled and reclaimed and does not currently provide water access. The Trust Termination Easement Parcel is no longer tidelands, submerged lands or a navigable waterway because it is physically separated from the current San Gabriel River and is no longer covered with water. The Trust Termination Easement Parcel is fenced off and does not currently provide any public trust purposes.

CALENDAR ITEM NO. 73 (CONT'D)

The only portion of the 10.9-acre site impressed with a public trust easement is the Trust Termination Easement Parcel that is located on the northern portion of the site, the farthest away from the ocean. This is the area that is proposed for residential development, and the portion of the site closer to the ocean and the river are to be reserved as public spaces. For the past 30 years, this Trust Termination Easement Parcel has remained relatively useless for trust purposes, as evidenced by the lack of trust-consistent development interest.

Since 1982, the site has been subject to a specific plan designation for open space and a visitor-serving hotel but there was never a certified Local Coastal Program for this area. Commission staff has reviewed the feasibility studies submitted to the Coastal Commission that evaluated whether a hotel development on the site is feasible. Commission staff believes that the feasibility studies provided by Bay City concluding that a hotel is not feasible on the site are based on reasonable assumptions and analysis.

Importantly, the Public Trust Easement Parcel and the deposit of \$2.71 million into the Kapiloff Land Bank Fund will provide significantly more value to the public trust relative to the Trust Termination Parcel, even with the requirement that the development include visitor-serving accommodations on four lots within the Trust Termination Parcel. These four individual lots are required to be dedicated in perpetuity for visitor serving accommodations through the approved coastal development permit. Thus, leaving the public trust easement on these four lots would not add any additional protections. As such, the Trust Termination Parcel is relatively useless for trust purposes compared to the Public Trust Easement Parcel and the \$2.71 million deposit into the Kapiloff Land Bank Fund to be used to acquire land better suited for public trust purposes.

Mineral interests are not being exchanged as part of the Agreement.

The Agreement only involves public trust easements in the property and does not include any conveyance of fee interest that could include mineral rights. In addition, the Agreement expressly states that it does not affect any mineral interests.

Exchange is in the best interests of the state.

Through the Agreement, the Commission will receive a slightly larger public trust easement adjacent to and in the San Gabriel River and a significant deposit into the Kapiloff Land Bank Fund to acquire other interests in land better suited for public trust purposes. The Agreement will allow for the residential development on the northern portion of the 10.9-acre site and, as a result, 6.4 acres will be conveyed to the City as open space and recreational land. The Agreement will ensure that through acceptance of the Public Trust Easement Parcel the public

CALENDAR ITEM NO. **73** (CONT'D)

has a permanent right to use the portion of the San Gabriel River Bike Trail that passes through the property and is currently in private ownership.

Since litigation of this matter would likely be extremely protracted and costly with uncertain results, the Parties to the Agreement consider it expedient, necessary, and in the best interests of the State and Bay City to resolve this dispute through a title settlement and land exchange agreement thereby avoiding the substantial costs and uncertainties of litigation.

California Environmental Quality Act (CEQA) review

The City's Environmental Impact Report (EIR), certified on June 25, 2012 (State Clearinghouse [SCH] No. 2011061018), examined all the environmental effects from the Specific Plan Amendment and related development on the site. The EIR did not discuss the Agreement that would be necessary before the development occurred. In October 2014, the Commission staff prepared an Addendum to the certified EIR as contained in Exhibit D. There is no legal requirement to publicly circulate an Addendum; however, Commission staff published the Addendum on its website on October 1, 2014, and sent notices to all recipients on the original EIR mailing list as well as other interested parties known to Commission staff. As detailed in the Addendum, Commission staff found that the modified project, the proposed title settlement and land exchange agreement, did not have any new significant effects on the environment.

Below is a table showing the differences between the previously authorized Agreement and the two options to modify the Agreement. Commission staff has reviewed the Addendum again in light of the two proposals. The differences below do not substantively modify the analysis of the Addendum. The main difference is that less acreage from the existing public trust easement would be terminated and less money would be deposited into the Kapiloff Land Bank Fund.

	Authorized Agreement	Bay City Proposal	Alternate Proposal
Trust Termination Easement Parcel	1.168 acres	0.38 acre	0.78 acre
Public Trust Easement Parcel	1.177 acres	1.177 acres	1.177 acres
Kapiloff Land Bank Fund Deposit	\$2.71 million	\$882,900	\$1.82 million

CALENDAR ITEM NO. 73 (CONT'D)

Public Resources Code section 21080.11 states that “[t]his division [CEQA] shall not apply to settlements of title and boundary problems by the State Lands Commission and to exchanges or leases in connection with those settlements.” Commission staff believes that Public Resources Code section 21080.11 is applicable to the Agreement and that no additional CEQA review is required because the Agreement is in furtherance of the settlement of title problems. The dispute is over whether there is a valid public trust easement on the Trust Termination Easement Parcel. Bay City strongly disagrees with the Commission’s public trust easement claim.

Recommendation

Commission staff recommends that no further action be taken, concerning the Agreement previously authorized by the Commission. If Bay City approves the Agreement, it will be implemented as previously described. Commission staff believes that terminating the public trust easement on the entire Trust Termination Easement Parcel and receiving \$2.71 million for the Kapiloff Land Bank Fund is the most beneficial outcome for the trust and in the best interests of the state. The Trust Termination Easement Parcel is already unconnected from other sovereign interests in the San Gabriel River. Leaving the public trust easement on portions of the Trust Termination Easement Parcel would provide limited benefit to the trust as streets surrounded by residential development. The four lots that will be dedicated to visitor-serving uses will already be protected as a requirement of the approved coastal development permit through an offer-to-dedicate mechanism. The full \$2.71 million deposit into the Kapiloff Land Bank Fund to purchase other interests in land for public trust purposes will provide a greater benefit than small remnant easement parcels. Both the proposals to modify the Agreement would satisfy the legal requirements for a land exchange under Section 6307 as described above.

OTHER PERTINENT INFORMATION:

1. An EIR, SCH No. 2011061018, was prepared for this project by the City and certified on June 25, 2012. Commission staff has reviewed this document and Mitigation Monitoring Program prepared pursuant to the provisions of CEQA (Pub. Resources Code, § 21081.6) and adopted by the City. On October 1, 2014, Commission staff prepared an Addendum to the certified EIR and posted the Addendum on its website and mailed notices of intent informing interested persons about the Addendum.
2. The staff recommends that the Commission find that this activity is exempt from the requirements of CEQA as a statutorily exempt project. The project is exempt because it involves settlement of title and boundary problems and to exchanges or leases in connection with those settlements.

CALENDAR ITEM NO. 73 (CONT'D)

Authority: Public Resources Code Section 21080.11 and California Code of Regulations, Title 14, section 15282, subdivision (f).

3. This activity involves lands that have NOT been identified as possessing significant environmental values pursuant to Public Resources Code section 6370 et seq.; however, the Commission has declared that all lands are “significant” by nature of their public ownership (as opposed to “environmentally significant”). Since such declaration of significance is not based upon the requirements and criteria of Public Resources Code section 6370 et seq., use classifications for such lands have not been designated. Therefore, the finding of the project’s consistency with the use classification as required by California Code of Regulations, Title 2, section 2954 is not applicable.

EXHIBITS:

- A. Site and Location Map Authorized Agreement
- B. Bay City Proposal
- C. Alternate Proposal
- D. Addendum

RECOMMENDED ACTION:

AUTHORIZATION:

No action. (The Commission’s previous approval of CI 108 at the October 14, 2014 meeting would remain in effect.)

ALTERNATIVE 1 – BAY CITY PROPOSAL:

The Commission:

CEQA FINDINGS:

Find that the activity is exempt from the requirements of CEQA pursuant to California Code of Regulations, Title 14, section 15061 as a statutorily exempt project pursuant to Public Resources Code section 21080.11 and California Code of Regulations, Title 14, section 15282, subdivision (f), settlement of title and boundary problems and to exchanges or leases in connection with those settlements.

Find that an EIR, SCH No. 2011061018, was prepared for this project by the City of Seal Beach and certified on June 25, 2012, and that the Commission has reviewed and considered the information contained therein and in the Addendum as contained in Exhibit D prepared by Commission staff.

CALENDAR ITEM NO. **73** (CONT'D)

Find that in its independent judgment, none of the events specified in Public Resources Code section 21166 or State CEQA Guidelines section 15162 resulting in any new or substantially more severe significant impacts has occurred, and therefore, no additional CEQA analysis is required.

AUTHORIZATION:

1. Based upon the foregoing analysis, the information contained in the Commission's files, and the information presented at the public meeting on the proposed Agreement, find that:
 - A. The Public Trust Easement Parcel provides significant benefits to the public trust because the parcel provides public access and recreation along the San Gabriel River towards the Pacific Ocean. Additionally, the Public Trust Easement Parcel enhances the physical configuration of the trust land ownership.
 - B. The exchange provided for in the Agreement does not substantially interfere with public rights of navigation and fishing, but rather will protect and enhance the public's rights of public access and recreation in the Public Trust Easement Parcel that is adjacent to and in the San Gabriel River.
 - C. The Public Trust Easement Parcel to be acquired by the Commission and the \$882,900 deposit into the Kapiloff Land Back Fund is equal to or greater than the monetary value of the Trust Termination Easement Parcel to be quitclaimed by the Commission to Bay City.
 - D. The Trust Termination Easement Parcel, consisting of 0.38 acre being relinquished, is cut off from water access and no longer is in fact tidelands or submerged lands or navigable waterways, by virtue of being filled and reclaimed, and is relatively useless for public trust purposes.
 - E. The Agreement is in the best interests of the state for the following reasons: 1) by consolidating and expanding the total acreage of lands protected under the public trust; 2) providing and protecting public access and recreation along the San Gabriel River through the acquisition of the Public Trust Easement Parcel; 3) the \$882,900 deposit into the Kapiloff Land Bank Fund shall be used to purchase outstanding interests in tide and submerged lands or in lands that are beneficial for the furtherance of public trust purposes.
 - F. The Agreement shall release any and all public trust claims from the Trust Termination Parcel Easement that is being conveyed by the Commission to Bay City and shall impose

CALENDAR ITEM NO. 73 (CONT'D)

- the public trust easement onto the Public Trust Easement Parcel being conveyed by Bay City to the Commission.
- G. The purposes of the exchange provided for in the Agreement are to: 1) enhance public access and recreation to and along the water; 2) enhance the physical configuration of the trust land ownership, and 3) resolve a title dispute.
- H. It is the intent of the Agreement that no mineral rights shall be transferred as part of the Agreement.
2. Find that the lands and interests in lands to be conveyed to the State of California, acting by and through the Commission, are to be accepted as public trust lands for the benefit of the people of the State of California, to be held by the State of California for public trust purposes.
3. Approve and authorize the execution, acknowledgment, and recordation of the Agreement and associated deeds and acceptances on behalf of the Commission, in substantially the form of the copy of such Agreement on file with the Commission.
4. Authorize the acceptance and deposit of \$882,900 into the Kapiloff Land Bank Fund to be used only for the purchase of interest(s) in land pursuant to Public Resources Code section 8613, subdivision (a).
5. Authorize and direct the staff of the Commission and/or the California Attorney General to take all necessary or appropriate action on behalf of the California State Lands Commission, including the execution, acknowledgment, acceptance, and recordation of all documents as may be necessary or convenient to carry out the Agreement; and to appear on behalf of the Commission in any legal proceedings relating to the subject matter of the Agreement.

ALTERNATIVE 2 – ALTERNATE PROPOSAL:

The Commission:

CEQA FINDINGS:

Find that the activity is exempt from the requirements of CEQA pursuant to California Code of Regulations, Title 14, section 15061 as a statutorily exempt project pursuant to Public Resources Code section 21080.11 and California Code of Regulations, Title 14, section 15282, subdivision (f),

CALENDAR ITEM NO. 73 (CONT'D)

settlement of title and boundary problems and to exchanges or leases in connection with those settlements.

Find that an EIR, SCH No. 2011061018, was prepared for this project by the City of Seal Beach and certified on June 25, 2012, and that the Commission has reviewed and considered the information contained therein and in the Addendum as contained in Exhibit D prepared by Commission staff.

Find that in its independent judgment, none of the events specified in Public Resources Code section 21166 or State CEQA Guidelines section 15162 resulting in any new or substantially more severe significant impacts has occurred, and therefore, no additional CEQA analysis is required.

AUTHORIZATION:

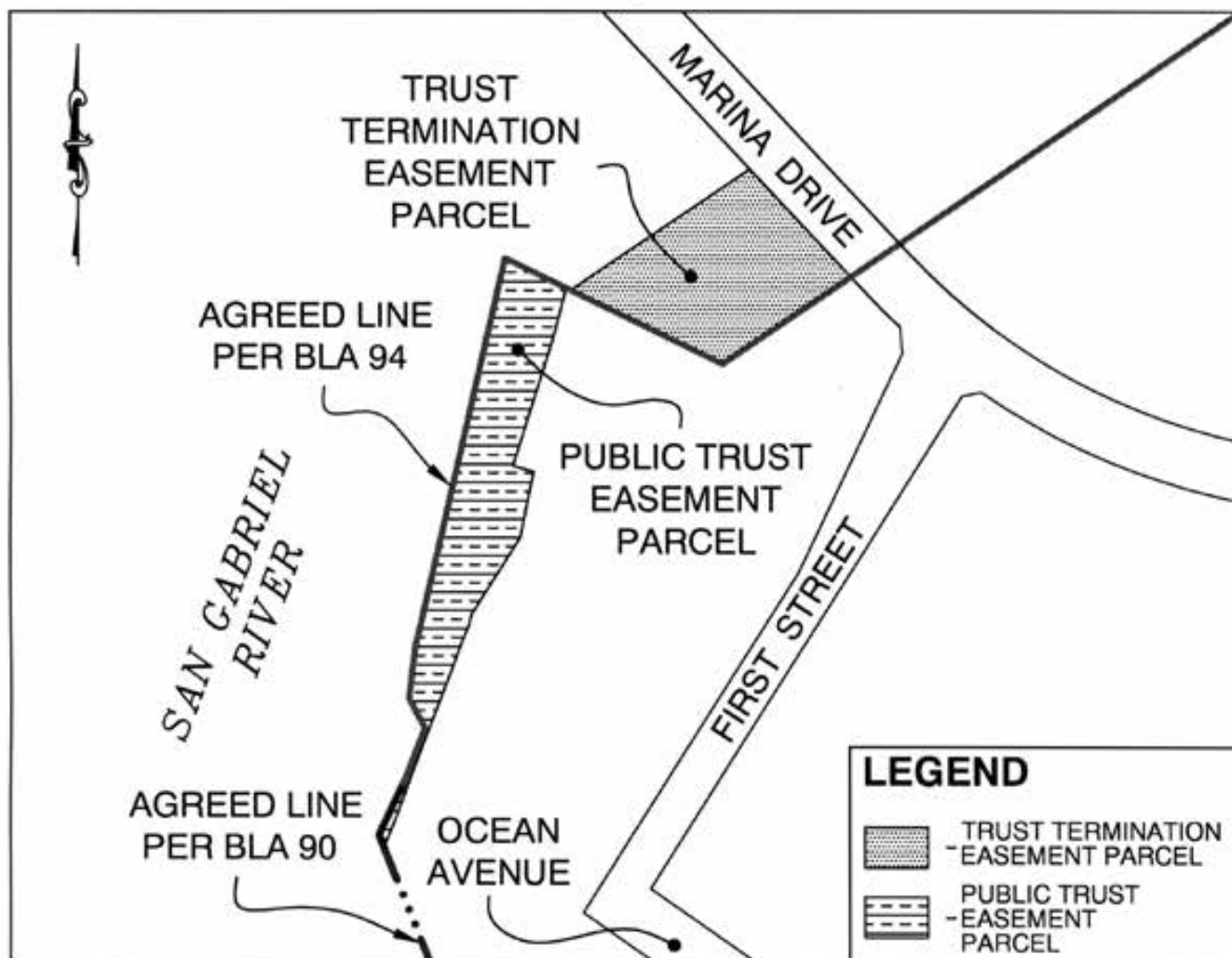
1. Based upon the foregoing analysis, the information contained in the Commission's files, and the information presented at the public meeting on the proposed Agreement, find that:
 - A. The Public Trust Easement Parcel provides significant benefits to the public trust because the parcel provides public access and recreation along the San Gabriel River towards the Pacific Ocean. Additionally, the Public Trust Easement Parcel enhances the physical configuration of the trust land ownership.
 - B. The exchange provided for in the Agreement does not substantially interfere with public rights of navigation and fishing, but rather will protect and enhance the public's rights of public access and recreation in the Public Trust Easement Parcel that is adjacent to and in the San Gabriel River.
 - C. The Public Trust Easement Parcel to be acquired by the Commission and the \$1.82 million deposit into the Kapiloff Land Back Fund is equal to or greater than the monetary value of the Trust Termination Easement Parcel to be quitclaimed by the Commission to Bay City.
 - D. The Trust Termination Easement Parcel, consisting of 0.78 acre being relinquished, is cut off from water access and no longer is in fact tidelands or submerged lands or navigable waterways, by virtue of being filled and reclaimed, and is relatively useless for public trust purposes.
 - E. The Agreement is in the best interests of the state for the following reasons: 1) by consolidating and expanding the total acreage of lands protected under the public trust; 2)

CALENDAR ITEM NO. **73** (CONT'D)

- providing and protecting public access and recreation along the San Gabriel River through the acquisition of the Public Trust Easement Parcel; 3) the \$1.82 million deposit into the Kapiloff Land Bank Fund shall be used to purchase outstanding interests in tide and submerged lands or in lands that are beneficial for the furtherance of public trust purposes.
- F. The Agreement shall release any and all public trust claims from the Trust Termination Parcel Easement that is being conveyed by the Commission to Bay City and shall impose the public trust easement onto the Public Trust Easement Parcel being conveyed by Bay City to the Commission.
 - G. The purposes of the exchange provided for in the Agreement are to: 1) enhance public access and recreation to and along the water; 2) enhance the physical configuration of the trust land ownership, and 3) resolve a title dispute.
 - H. It is the intent of the Agreement that no mineral rights shall be transferred as part of the Agreement.
- 2. Find that the lands and interests in lands to be conveyed to the State of California, acting by and through the Commission, are to be accepted as public trust lands for the benefit of the people of the State of California, to be held by the State of California for public trust purposes.
 - 3. Approve and authorize the execution, acknowledgment, and recordation of the Agreement and associated deeds and acceptances on behalf of the Commission, in substantially the form of the copy of such Agreement on file with the Commission.
 - 4. Authorize the acceptance and deposit of \$1.82 million into the Kapiloff Land Bank Fund to be used only for the purchase of interest(s) in land pursuant to Public Resources Code section 8613, subdivision (a).
 - 5. Authorize and direct the staff of the Commission and/or the California Attorney General to take all necessary or appropriate action on behalf of the California State Lands Commission, including the execution, acknowledgment, acceptance, and recordation of all documents as may be necessary or convenient to carry out the Agreement; and to appear on behalf of the Commission in any legal proceedings relating to the subject matter of the Agreement.

NO SCALE

SITE



SAN GABRIEL RIVER VICINITY, CITY OF SEAL BEACH

NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

This Exhibit is solely for purposes of generally defining the lease premises, is based on unverified information provided by the Lessee or other parties and is not intended to be, nor shall it be construed as, a waiver or limitation of any State interest in the subject or any other property.

Exhibit A

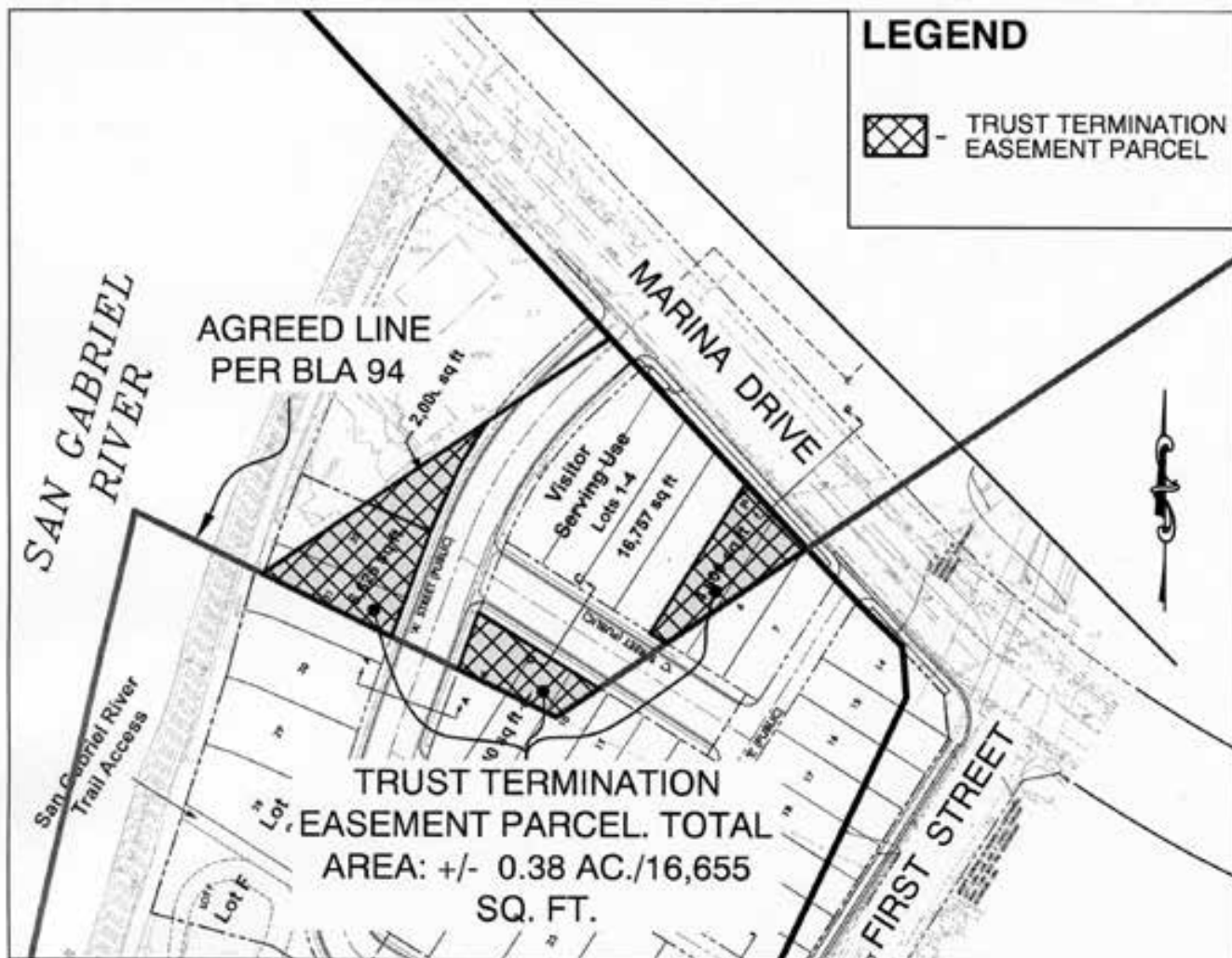
W 26609
BAY CITY
PARTNERS, LLC
TITLE SETTLEMENT
ORANGE COUNTY



JWP 09/30/14

NO SCALE

SITE



BAY CITY PARTNERS' PROPOSAL

NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

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Exhibit B

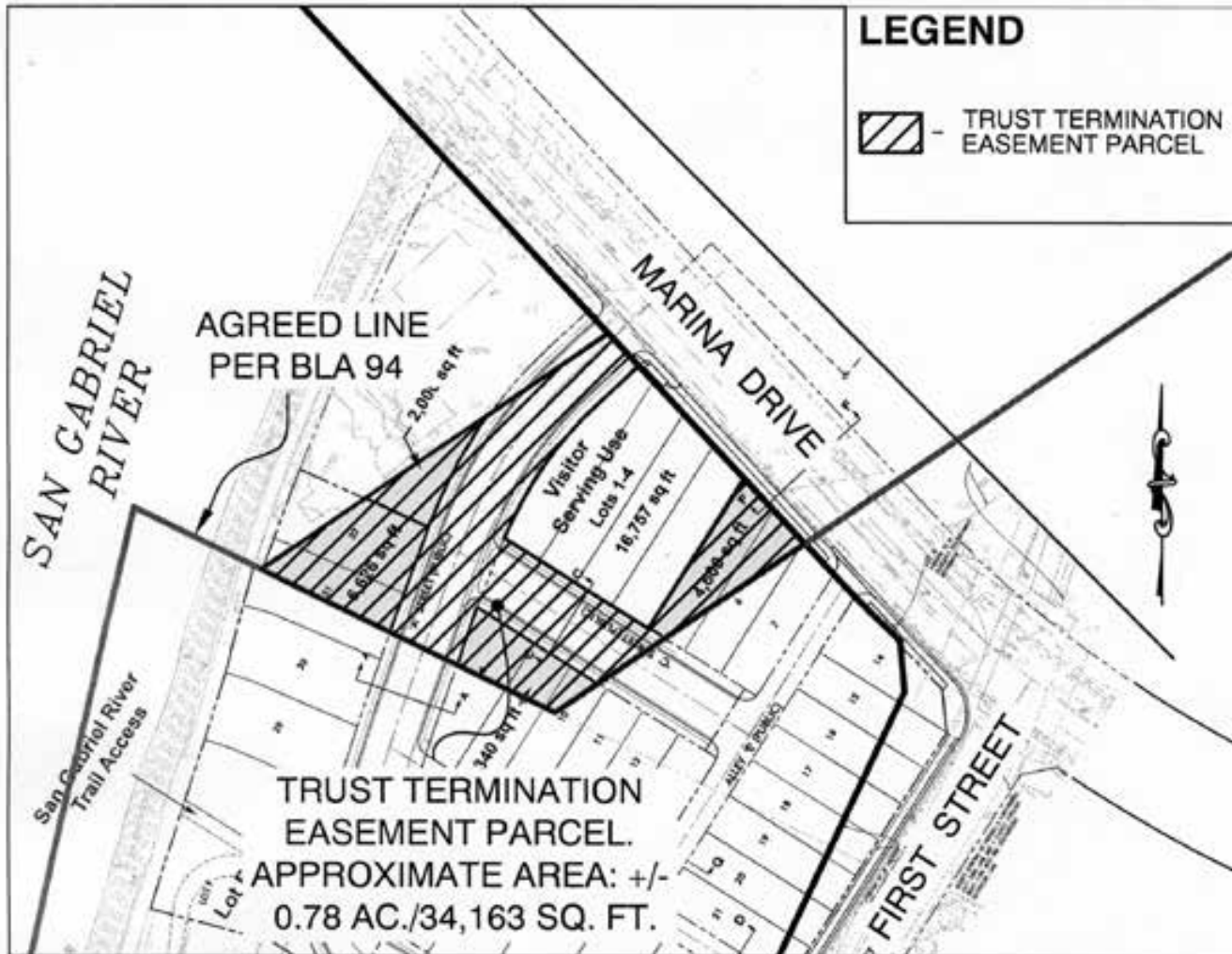
W 26609
BAY CITY
PARTNERS, LLC
TITLE SETTLEMENT
ORANGE COUNTY



JWP 10/05/15

NO SCALE

SITE



ALTERNATE PROPOSAL

NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

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Exhibit C

W 26609
BAY CITY
PARTNERS, LLC
TITLE SETTLEMENT
ORANGE COUNTY



JWP 10/05/15

EXHIBIT D

**ENVIRONMENTAL IMPACT REPORT ADDENDUM
TITLE SETTLEMENT AND LAND EXCHANGE
AGREEMENT (DEPARTMENT OF WATER AND POWER
SPECIFIC PLAN AMENDMENT PROJECT)**

SCH No. 2011061018

October 2014



Responsible Agency:

California State Lands Commission
100 Howe Avenue, Suite 100 South
Sacramento, California 95825

Lead Agency:

City of Seal Beach
211 8th Street
Seal Beach, California 90740

Project Proponent:

Bay City Partners, LLC
627 Bayside Drive
Newport Beach, California 92660

TABLE OF CONTENTS

1.0 INTRODUCTION	1-1
1.1 PROJECT LOCATION	1-1
1.2 PROJECT MODIFICATION	1-1
1.3 PROJECT BACKGROUND AND OBJECTIVES	1-1
2.0 DESCRIPTION OF PROJECT MODIFICATION	2-1
2.1 ADDENDUM PURPOSE AND NEED	2-1
2.2 COMPONENTS OF PROJECT MODIFICATION	2-2
3.0 ENVIRONMENTAL ASSESSMENT.....	3-1
4.0 DETERMINATION/ADDENDUM CONCLUSION.....	4-1
5.0 ADDENDUM PREPARATION SOURCES AND REFERENCES.....	5-1

1.1 PROJECT LOCATION

The Department of Water and Power Specific Plan Amendment (Project) is located within the City of Seal Beach (City), in the northwestern portion of Orange County. The overall Project involves a 10.9-acre site (Assessor's Parcel Numbers [APNs] 043-171-02, -172-07 (portions), -172-08, -172-12, and -172-13), which currently consists of vacant land, portions of a residence and commercial facility, and portions of the San Gabriel River and associated bike trail (San Gabriel River Bike Trail). The overall Project site was formerly utilized by the Los Angeles Department of Water and Power (DWP) for power plant facilities and operations. The Project site is generally bounded by Marina Drive to the north, 1st Street to the east, the Rivers End Café/beach parking lot to the south, and the San Gabriel River to the west.

1.2 PROJECT MODIFICATION

The proposed Project modification is a proposed Title Settlement and Land Exchange Agreement (Land Exchange Project) involving Parcels 1, 6, 7 and 8 of the Project (see Figure 2-1, *Existing Legal Parcels*).

The Project site is currently divided into eight legal parcels which are owned in fee by Bay City Partners, LLC (BCP). Parcel 1 is approximately 1.168 acre area currently encumbered with a public trust easement. A public trust easement is a sovereign public property right held by the State (under the jurisdiction of the California State Lands Commission [CSLC]), for the benefit of all the people in California. Public trust purposes include but are not limited to waterborne commerce, navigation, fisheries, water-related recreation, habitat preservation, and open space.

The proposed Land Exchange Project includes the CSLC terminating the public trust easement on Parcel 1 in exchange for BCP granting a public trust easement on a approximately 1.177 acre parcel which includes a portion of Parcel 6, and a portion of Parcel 7 and Parcel 8 along the bike trail and depositing \$2.71 million into the Kapiloff Land Bank Fund, which is administered by the CSLC (see Figure 2-2, *Proposed Exchange*).

1.3 PROJECT BACKGROUND AND OBJECTIVES

On May 27, 2011, BCP submitted an application to the City to develop the DWP Specific Plan area with a 48-lot residential development on 4.5 acres and 6.4 acres for public open space passive recreation purposes. The Draft Environmental Impact Report (EIR) was circulated for a 57-day public review and comment period from November 14, 2011, to January 9, 2012. Following the public review period, the City prepared a Final

EIR, which included written responses to all comments received during the public review period regarding the Draft EIR, a Mitigation Monitoring and Reporting Program, and Errata. The Final EIR was released to the public on April 2, 2012.

On May 2, 2012, and June 6, 2012, the Planning Commission held duly noticed public hearings to consider the proposed Project. During the May 2, 2012 hearing, the Applicant presented a revised tract map that contained the same number of lots within the same tract boundary, but with a different lot configuration and site access. The Planning Commission provided comments to the applicant regarding the originally submitted tract map and the revised map. The concerns primarily focused on lot widths, drainage patterns/water quality features, pad elevations, and street/alley widths. Consequently, the Applicant again revised the tract map to address the Planning Commissions' comments. The site plan ultimately resulted in a 32-lot residential development on 4.5 acres and 6.4 acres for public open space passive recreation purposes. Upon an environmental analysis of the Alternative Site Plan, conducted in June 2012, the proposed project and Final EIR were considered by the Planning Commission and City Council. The Final EIR was certified on June 25, 2012, by the City Council.

CSLC staff first became aware of the Project in late April 2012, and on May 2, 2012, CSLC staff submitted a letter to the Planning Commission explaining that a portion of the Project site was impressed with a public trust easement. BCP, the property owner, has disagreed with CSLC's position. Several boundary line and exchange agreements with the CSLC and the prior owners involved portions of the 10.9-acre site in the late 1960s and early 1970s which fixed the boundaries of Rancho Los Alamitos and State Tideland Location No. 137.

As the agency with ownership and control of the State's ungranted tide and submerged lands, the CSLC must make specific findings pursuant to Public Resources Code section 6307 when approving a title settlement and land exchange agreement involving filled or reclaimed tide and submerged lands that are subject to the public trust.

The proposed Land Exchange Project involves \$2.71 million being deposited into the Kapiloff Land Bank Fund, which CSLC administers as the trustee pursuant to Public Resources Code section 8600 et seq. The Kapiloff Land Bank Act (Act) was introduced by Assemblyman Lawrence Kapiloff and enacted by the Legislature in 1982. The Act is an extension of CSLC's authority as set forth in Public Resources Code section 6307, which was enacted to facilitate settlements of title to real property with cash payments where exchange parcels are not readily available or are not of equal value and to facilitate mitigation through the pooling of such payments.

2.0 DESCRIPTION OF PROJECT MODIFICATION

2.1 ADDENDUM PURPOSE AND NEED

Once an Environmental Impact Report (EIR) has been certified for a project, no subsequent or supplemental EIR shall be required unless one or more of the following events occurs:

- 1) Substantial changes are proposed in the project which will require major revisions of the EIR.
- 2) Substantial changes occur with respect to the circumstances under which the project is being undertaken which will require major revisions in the EIR.
- 3) New information, which was not known and could not have been known at the time the EIR was certified, becomes available. (Pub. Resources Code, § 21166.)

The State CEQA Guidelines section 15162 (Cal. Code Regs., tit. 14, § 15000 et seq.) provides additional information on when the above events trigger the need for a subsequent EIR. A subsequent EIR is required if:

- 1) Substantial changes are proposed in the project which will require major revisions of the previous EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;
- 2) Substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or
- 3) New information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete shows any of the following:
 - A. The project will have one or more significant effects not discussed in the previous EIR;
 - B. Significant effects previously examined will be substantially more severe than shown in the previous EIR;
 - C. Mitigation measures or alternatives previously found not to be feasible would in fact be feasible, and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative; or

- D. Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.

When none of the above events has occurred, yet some changes or additions are necessary, an addendum is required. (State CEQA Guidelines, § 15164.)¹

As will be explained below, none of the conditions described in State CEQA Guidelines section 15162 calling for preparation of a subsequent EIR has occurred. This Addendum supports the conclusion that the Land Exchange Project does not result in any new significant environmental effects or a substantial increase in the severity of previously identified significant effects. There are no new mitigation measures or alternatives available that would substantially reduce the environmental effects beyond those previously described in the EIR. As a result, an addendum is an appropriate CEQA document for analysis and consideration of the Land Exchange Project.

Circulation of an addendum for public review is not necessary (State CEQA Guidelines, § 15164, subd. (c)); however, the addendum must be considered in conjunction with the Final EIR by the decision-making body (State CEQA Guidelines, § 15164, subd. (d)).

2.2 COMPONENTS OF PROJECT MODIFICATION

Parcel 1 is encumbered with a public trust easement held by the California State Lands Commission (CSLC) in trust for the people of California. Development of residential uses is prohibited on such land. In order to settle the disputed claim of a public trust easement and allow use of Parcel 1 for residential development, the Project Proponent proposes to obtain approval from the CSLC of a title settlement and land exchange agreement pursuant to Public Resources Code section 6307 to terminate the public trust easement from Parcel 1 in exchange for Bay City Partners, LLC (BCP) granting to CSLC a public trust easement in a portion of Parcels 6, 7 and 8 and \$2.71 million to be deposited in the Kapiloff Land Bank Fund (see Figure 2-2, *Proposed Exchange*).

CSLC staff and BCP have worked on a draft title settlement and land exchange agreement for the termination of the public trust easement on Parcel 1 (1.168 acres) in exchange for a public trust easement on a portion of Parcels 6, 7, 8 (1.177 acres) which is located along the San Gabriel River, plus a cash payment of \$2.71 million to the Kapiloff Land Bank Fund. These monies will be held in the Kapiloff Land Bank Fund

¹ It is noted that this Addendum does not address other CEQA exemptions that may be applicable to this land exchange, such as Public Resources Code section 21080.11 (CEQA not applicable to State Lands Commission settlements) or other CEQA categorical exemptions. (See e.g., State CEQA Guidelines, §§ 15307 (actions by regulatory agencies for protection of natural resources), 15308 (actions by regulatory agencies for protection of the environment), 15317 (open space contracts or easements), and 15061, subd. [b][3] (common sense exemption).)

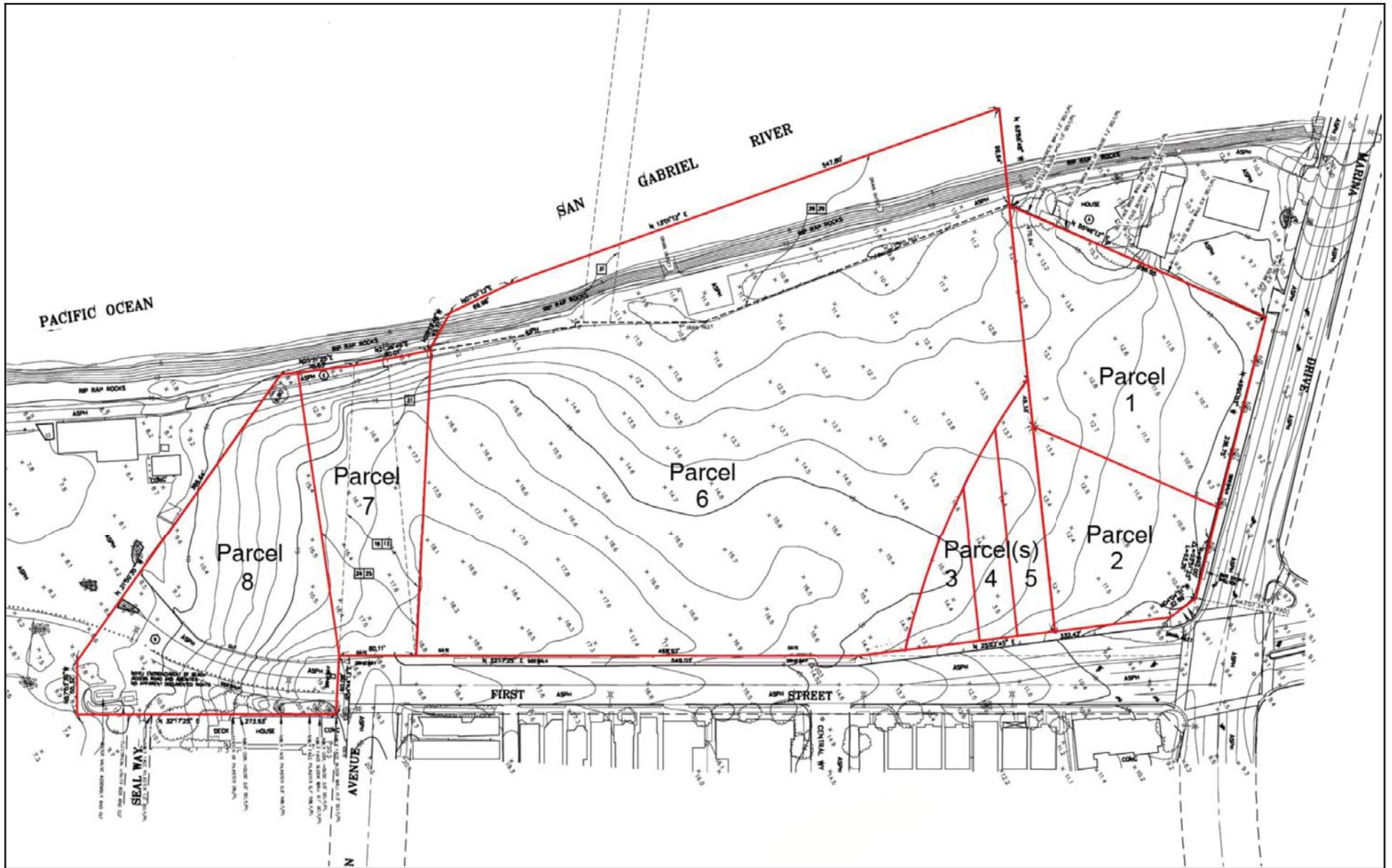
subject to the statutory requirement that they be spent to acquire property interests in tide and submerged lands or adjoining lands that are necessary or extremely beneficial for public trust purposes. The payment of \$2.71 million to this fund conforms to its purpose and furthers the CSLC's mission of acquiring public trust lands. The CSLC holds and administers the acquired lands as sovereign lands of the legal character of tidelands and submerged lands.

The CSLC's discretionary actions associated with this proposed Project modification include making the requisite findings pursuant to Public Resources Code section 6307 and approving the Title Settlement and Land Exchange Agreement prior to residential development on the site.

The Final EIR certified by the City of Seal Beach (City) did not expressly analyze the environmental effects of the proposed Land Exchange Project. Public comment was received during public review of the Draft EIR, circulated from November 14, 2011, through January 9, 2012. The City responded to those comments pertaining to the claimed public trust easement as follows:

“...comment makes a legal argument that the ‘public trust doctrine prohibits the type of residential land use proposed in this Project....’ Such argument does not raise new environmental information or challenge information provided in the Draft EIR. In that this argument does not question the Draft EIR’s factual conclusions or the adequacy of the environmental analysis in the Draft EIR, no further response is necessary.”

The purpose of this Addendum to the certified EIR is to verify that the proposed Land Exchange Project between BCP and the CSLC would not cause significant, adverse impacts to the environment.



NOT TO SCALE



09/14

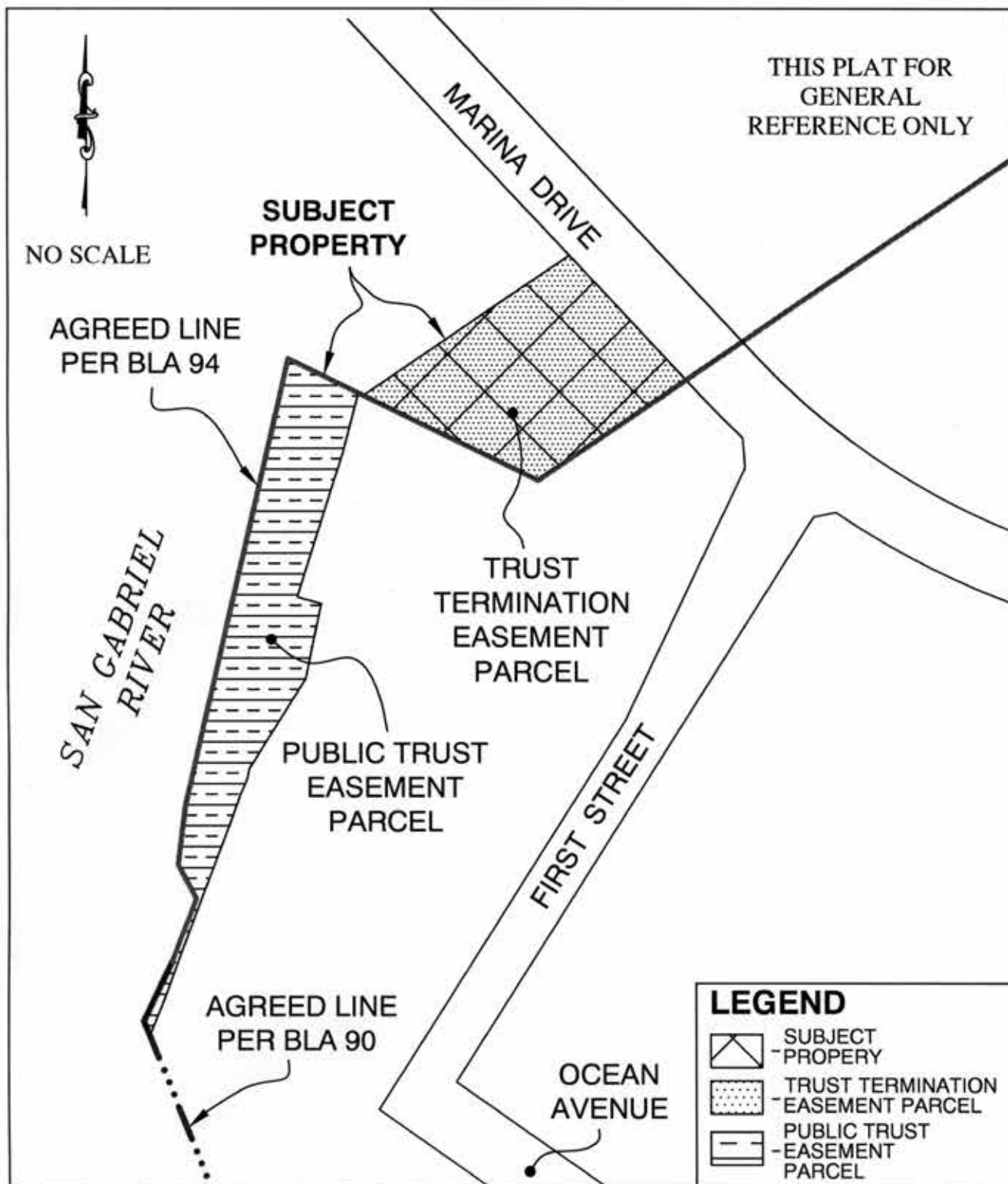


FIGURE 2-2

Page 1 of 1



3.0 ENVIRONMENTAL ASSESSMENT

This comparative analysis has been undertaken to analyze whether the proposed Land Exchange Project would have any significant environmental impacts that are not addressed in the Final Environmental Impact Report (EIR). The comparative analysis discusses whether impacts are increased, decreased, or unchanged from the conclusions discussed in the Final EIR. The comparative analysis also addresses whether any changes to mitigation measures are required.

Aesthetics/Light and Glare. The Land Exchange Project would result in the same land use and development as that analyzed for the Final EIR for the Project. Therefore, no new impacts have been identified and no new mitigation measures are required.

Agriculture Resources. As was the case with the Final EIR for the Project, the Land Exchange Project would not result in any impacts to farmland, agricultural uses, or forest land. Therefore, no new impacts have been identified and no new mitigation measures are required.

Air Quality. The Land Exchange Project would result in the same construction activities (including cut and fill and earthwork volumes) as the Final EIR for the Project. The Land Exchange Project would also result in the same generation of vehicle trips as the Final EIR for the Project, resulting in the same operational air emissions. Thus, no new impacts have been identified and no new mitigation measures are required.

Biological Resources. With implementation of the Land Exchange Project, construction activities would occur over the same development footprint as the Final EIR for the Project. The Land Exchange Project would also not conflict with local policies, ordinances, or plans, similar to the Final EIR for the Project. No new impacts have been identified and no new mitigation measures are required.

Cultural Resources. The Land Exchange Project would result in the same construction activities as the Final EIR for the Project. No new impacts have been identified and no new mitigation measures are required.

Geology and Soils. The Land Exchange Project would result in the same impacts regarding geology and soils since the proposed development area would be the same (compared to the Final EIR for the Project). No new impacts have been identified and no new mitigation measures are required.

Greenhouse Gas (GHG) Emissions. The Land Exchange Project would result in the same construction activities as the Final EIR for the Project in regards to grading and construction activities as well as long-term trip generation/distribution. Thus, the Land Exchange Project would not result in increased GHG emissions compared to the Final

EIR for the Project. No new impacts have been identified and no new mitigation measures are required.

Hazards and Hazardous Materials. The Land Exchange Project would involve similar construction activities and operations, and would result in similar hazard and hazardous materials-related impacts as the Final EIR for the Project. No new impacts have been identified and no new mitigation measures are required.

Hydrology and Water Quality. The Land Exchange Project would not result in any changes to the proposed grading, drainage, and/or resultant discharge patterns for the site and surrounding area, compared to that analyzed in the Final EIR for the Project. No new impacts have been identified and no new mitigation measures are required.

Land Use and Planning. The proposed Land Exchange Project would not result in any changes to the proposed land uses. These project changes would be consistent with the City's goals and policies applicable to the project site. No new impacts have been identified and no new mitigation measures are required.

Mineral Resources. As the Land Exchange Project only involves public trust easements and specifically states that it is not intended to affect any mineral rights at the site, no new impacts have been identified and no new mitigation measures are required for the Land Exchange Project.

Noise. The Land Exchange Project would not result in any new long-term mobile and stationary noise impacts. No changes to grading or construction activities would occur. No increases to vehicles trips would occur. No new impacts have been identified and no new mitigation measures are required.

Population and Housing. The Land Exchange Project would not result in an increase in population or housing. No new impacts pertaining to housing displacement would occur. No new impacts have been identified and no new mitigation measures are required.

Recreation. The Land Exchange Project would not result in any changes to the proposed recreational facilities or passive open space use on the southern portion of the site and no new demands for recreational facilities would result. The proposed Land Exchange Project would impress a public trust easement over a portion of the existing San Gabriel River Trail in the northern portion of the overall Project site. As discussed on page 5.13-2 of the Final EIR, the San Gabriel River Trail is an approximately 35-mile-long regional recreational paved trail that runs along the eastern boundary of the San Gabriel River. The trail extends from the base of the San Gabriel Mountains in the City of Azusa to the River's End Staging Area (RESA). The San Gabriel River drains a watershed that extends from the San Gabriel Mountains to the Pacific Ocean. The River

empties into the outlet of Alamitos Bay southwest of the project site. As depicted on the City's General Plan Figure OS-1, *Existing Parks, Recreation, and Open Space Areas*, the San Gabriel River corridor is designated Greenbelt. As discussed on page 5.13-25 of the Final EIR, regional recreational activities would continue along the Bike Trail/River. The Final EIR for the Project does not propose any physical alterations or improvements to these portions of the project site. The existing bike trail parcel is under lease to the City of Seal Beach until March 2015. Bay City Partners, LLC (BCP) has applied to the California Coastal Commission to develop a residential parcel which includes Parcel 1. If the overall Project is not approved by the Coastal Commission, the bike trail parcel lease would terminate 30 days thereafter. The Land Exchange Project would facilitate the continued use of the bike trail parcel.

The proposed Land Exchange Project and public trust easement would not result in any changes to the use of the existing bike path and no physical changes to the environment would occur. Thus, no new impacts have been identified and no new mitigation measures are required.

Transportation/Circulation. The Land Exchange Project would not result in an increase in trip generation. The circulation system would be unchanged. No new impacts have been identified and no new mitigation measures are required.

Public Services. The Land Exchange Project would not result in an increase in demands on public services. The acreage for the passive open space would be unchanged. No new impacts have been identified and no new mitigation measures are required.

Utilities and Service Systems. The Land Exchange Project would not result in an increase in the demands on utilities and service systems as that considered for the Final EIR for the Project. No new impacts have been identified and no new mitigation measures are required.

4.0 DETERMINATION/ADDENDUM CONCLUSION

As detailed in the analysis presented above, this Addendum supports the conclusion that the changes to the overall Project by including the Land Exchange Project do not result in any new significant environmental effects or a substantial increase in the severity of previously identified significant effects. No new information has become available and no substantial changes to the circumstances under which the overall Project is being undertaken have occurred since certification of the Environmental Impact Report (EIR). No substantial changes are required for the proposed Land Exchange Project, compared to that analyzed in the EIR. There are no new mitigation measures required and no new alternatives are available that would substantially reduce the environmental effects beyond those previously described in the EIR. Therefore, the California State Lands Commission (CSLC) has determined that no subsequent or supplemental EIR is required.

5.0 ADDENDUM PREPARATION SOURCES AND REFERENCES

Addendum Preparers:

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References:

City of Seal Beach, *Final Department of Water and Power Specific Plan Amendment Environmental Impact Report*, dated April 2, 2012 and certified June 25, 2012.